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IN THE HIGH COURT OF CHHATTISGARH AT
BILASPUR

WRIT PETITION No. 55/2003 2003

PETITIONER

: Nandram Banjare,
Son of Late Dileshar Banjare,
aged about 47 years,
Resident of Near Raipur Naka,
Behind Shivam Clinic,
Bilaspur (Chhattisgarh)

1085 for
P. R. No.
Presented by Shri. V.K. T. ...
dated 11.9.03

VERSUS

RESPONDENTS :

1. The Senior Regional Manager,
Regional Office,
Food Corporation of India,
Ring Road Junction,
N.H. No. 6, Near Railway
Crossing, Telibandha,
Raipur (Chhattisgarh)
2. District Manager,
Food Corporation of India,
Link Road, Bilaspur, Chhattisgarh

8/18/12

PETITION UNDER ARTICLES 226 AND 227 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT
IN THE NATURE OF CERTIORARI, MANDAMUS AND/
OR, NECESSARY DIRECTION/ORDERS.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

WRIT PETITION NO. 55 OF 2003

Nandram Banjare

Versus

The Senior Regional Manager, F.C.I. and another

Post for orders on 23rd January, 2006

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO.55 OF 2003

Petitioner : Nandram Banjare, Son of Late Dileshar Banjare,
aged about 47 years, Resident of Near Raipur
Naka, Behind Shivam Clinic, Bilaspur
(Chhattisgarh)

Versus

Respondents :1. The Senior Regional Manager,
Regional Office, Food Corporation of India, Ring
Road Junction, N.H. No. 6, Near Railway
Crossing, Telibandha, Raipur (Chhattisgarh).
2. District Manager, Food Corporation of India, Link
Road, Bilaspur Chhattisgarh.

Present: Shri M.D. Dhote, counsel for the petitioner.

Shri B.P. Gupta, counsel for the respondents.

ORDER

(Passed on 23rd January, 2006)

The following Order of the Court was passed by Satish K. Agnihotri, J : -

1. This petition filed by the petitioner seeks a direction against the respondents to correct the date of birth of the petitioner from 16.7.1946 to 16.8.1955.

2. The facts in nutshell are that, the petitioner was appointed as Watchman by the respondents on 15.5.1973 and before joining he submitted original certificate of class-VIII examination issued by Education Department, Purva Madhyamik Pariksha, Division Bilaspur, wherein the petitioner's date of birth recorded was 16.8.1955.

3. The petitioner received a memorandum dated 4.10.1979 (Annexure P-5) that original mark-sheet of Higher Secondary School Certificate (hereinafter referred to as "HSSC") examination passed by him in 1979 for verification by the office was required.

4. Subsequently, the petitioner received one more memorandum dated 5.11.1979 (Annexure P-6), whereby he was informed that his date of birth was recorded in the office records as 16.7.1946, when his date of birth as per HSSC examination, produced by the petitioner, was 16.8.1955. The petitioner was required to submit the original certificates of the middle school board examination passed by him in 69-70 and the mark-sheet of HSSC examination passed by him in 1979 for verification. The petitioner produced the said documents as required.

5. The petitioner thereafter submitted an application again on 27.11.2000 (Annexure P-7) for correcting his date of birth from 16.7.1946 to 16.8.1955. One more representation was sent to the Senior Regional Manager, Food Corporation of India, Regional Office, Raipur on 17.4.2002 (Annexure P-8). The Deputy Manager (Personnel) for Senior Regional Manager, Raipur sent a communication to the District Manager, Food Corporation of India, Bilaspur on 19.4.2000 seeking clarification and ascertaining the actual date of birth of the petitioner. The Assistant Manager (Administrative) for the District Manager by his communication dated 13.5.2002 (Annexure P-10) addressed to the Senior Regional Manager, Food Corporation of India, Regional Office, Raipur informed that date of birth recorded in the office records was 16.7.1946. However, it was requested to finalise the matter on the basis of the school certificate.

6. On the basis of return filed by the respondents, learned counsel for the respondents averred that the date of birth was declared as 16.7.1946 by

the petitioner at the time of appointment. The petitioner had not filed any application before 27.11.2000 for correction of his date of birth, and as such the present petition be dismissed on the ground of delay. Learned counsel did not question the genuineness and authenticity of the original certificates produced before the authorities and before this court.

7. Shri M.D. Dhote, learned counsel appearing for the petitioner submits that the petitioner has submitted original certificates way back in July, 1979 itself and the representation dated 27.11.2000 (Annexure P-7), was a second representation as pursuant to submission of his middle school certificate as well as HSSC examination, his date of birth was not corrected in the records. It was further contended that there is no delay in taking steps for correcting the date of birth as the same was done within a period of six years from the date of the appointment as soon as the petitioner came to know that his date of birth was wrongly recorded in the office records.

8. I have heard learned counsel for the parties and perused the records appended to the writ petition as well as the return filed by the respondents.

9. I found on perusal of the service record (Annexure R-1) that in the column of date of birth, the first date of birth written was blackened and then it was written 16.7.1946 without any initial/signature and against the column of present age, the first figures of years was blackened and 27 was written, thereafter. In the memorandum dated 10.4.1980 (Annexure R-3), it is clearly stated that the petitioner has submitted mark-sheet of HSSC examination and according to which his date of birth was 16.8.1955. It was proposed to seek the explanation of the petitioner under which he tried to cheat the organization. In memo dated 20.10.1981 (Annexure R-4), the petitioner was directed to submit his explanation with regard to discrepancy

in his date of birth. It appears that no action was taken, thereafter, in the matter.

10. Learned counsel for the respondents has produced, during hearing of the case, a copy of the application dated 10.7.1979 purported to be representation of the petitioner addressed to the District Manager, Food Corporation of India, whereby the petitioner has submitted his HSSC examination certificate issued by the Board of Secondary Education, Madhya Pradesh, Bhopal, wherein the date of birth recorded was 16.8.1955. Hence, contention of the learned counsel for the respondents that the petitioner has raised dispute in regard to change of the date of birth after more than 20 years in November, 2000, is unsustainable and deserves be rejected. It is clearly proved on the basis of records that the dispute was raised in July 1979 itself and which was under consideration till 1981, when it was proposed to seek explanation from the petitioner. The respondents, thereafter, kept quiet and did not proceed against the petitioner for any omission/commission with regard to the date of birth.

10. Learned counsel for the respondents heavily relied on decisions of the Supreme Court in *State of Punjab and others Vs. S.C. Chadha*¹, *State of U. P. and others Vs. Gulaichi (Smt)*², *Union of India Vs. Harnam Singh*³, *Union of India Vs. Hematram Pandya*⁴, *G.M. Bharat Cooking Coal Ltd. Vs. Shib Kumar Dushad & others*⁵, and *State of T.N. Vs. T. V. Venugopalan*⁶, in support of his contention that any claim for correction of date of birth must be made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order

¹(2004) 3 Supreme Court Cases 394, ²(2003) 6 Supreme Court Cases 483,

³(1993) 2 Supreme Court Cases 162, ⁴AIR 1995 SC 1349, ⁵AIR 2001 SC 72; and

⁶(1994) 6 SCC 302.

is framed, then such application must be filed at least within a reasonable time. Delay in making an application cannot be allowed in view of unexplained and inordinate delay after decades.

11. It is well settled principles of law that any delay in making an application for correction of the date of birth or and an application for correction of the date of birth at the fag end of his carrier should not be entertained. In the present case, the correct date of birth was informed by application in July 1979 itself. The petitioner was appointed as Watchman on 15.5.1973. Hence, there was no delay in making the application for correction of the date of birth as HSSC examination certificate indicating of the date of birth of the petitioner as 16.8.1955, was admittedly filed in July 1979. Subsequent representation dated 27.11.2000 cannot be taken as the first application/representation for correction of the date of birth. Argument of learned counsel for the respondents that the first application along with HSSC examination certificate was made for the purpose of seniority list, not for the correction of the date of birth, is not sustainable. The authorities had issued memos on the basis of middle school certificate as well as HSSC examination certificate showing date of birth as 16.8.1955 in 1979 and the file, it appears, was closed in 1981 without taking any decision. Failure to correct date of birth for a long period on the part of the respondents prompted the petitioner to make an application on 27.11.2000 again. Hence, there is no delay in filing the application/representation for correction of the date of birth and the application was not made at the fag end of the service of the petitioner. On the examination of all the papers, pre-middle school examination certificate, 1969 and HSSC examination

certificate, 1979, it is established that the petitioner's date of birth is 16.8.1955.

13. For the reasons stated above, the petition is allowed and the respondents are directed to take appropriate steps accordingly. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge